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INFORMATION FOR THE MEDICAL COMMUNITY AND THE PUBLIC FROM THE

D.C. BOARD OF MEDICINE

January 1998

ADMINISTRATIVE MEDICINE: ISA MEDICAL LICENSE REQUIRED?

On November 29, 1997, The Washington Post published an article that addressed the issue of administrative medicine. That article had the potential to mislead readers, and the D.C. Board of Medicine sent a letter-to-the-editor to attempt to correct some of the perspectives presented by The Post. The Post has not published the board's letter, and the Board presents that letter here to provide information for the medical community and the public on the case law and the Board's policy with respect to administrative medicine.

December 3, 1997
Letters-to-the- Editor
The Washington Post

Dear Editor:

The article, 'Former Blue Cross Official Still Doing Battle With D.C. Medical Board," that appeared in the November 29, 1997 edition of The Post, included some perspectives that, from the view of the D.C. Board of Medicine, may have tended to mislead your readers.

The article described the case of Dr. Gregory K. Morris, former Medical Director and Vice-President of Blue Cross/Blue Shield, who applied for a license to practice medicine in the District of Columbia. The article began with a description of Dr. Morris's duties at Blue Cros, Blue Shield: "...Gregory K. Morris approved or denied payments for treatment, wrote the rules for nearly 700,000 subscribers and kicked physicians out of the plan for ordering too much care for their patients." In fact, Dr. Morris testified at his hearing that he had "no vote" in the peer review process at Blue Cross/ Blue Shield. He testified that

he served only "as staff' to the decision-making peer review committees. This testimony can be reviewed in the hearing transcript, which is public information.

Dr. Morris further testified that he did not practice medicine at Blue Cross/Blue Shield. Based on the available evidence, the D.C. Board of Medicine (the 'Board") disagreed, and issued an order denying Dr. Morris a license to practice medicine in the District of Columbia because of his perceived unlicensed practice. Prior to the hearing, the Board had offered to settle the matter through consent order and payment of a fine for unlicensed practice, consistent with established practice. Dr. Morris declined to settle the matter and appealed the Board's order denying his medical license to the D.C. Court of Appeals (the "Court").

The Court decided in Dr. Morris's favor. However, the essence of the Court's decision was that the government did not refute to the Court's satisfaction Dr. Morris's assertion that he had "no vote" in peer review. The Court's decision in the Morris case was an evidentiary decision, and does not mean that patient interaction is necessary to the practice of medicine. Indeed, the Court has held in several cases, such as Joseph v. D.C. Board of Medicine, that patient contact is not a necessary ingredient in the practice of medicine. The Court, however, remanded the Morris case to the Board for further administrative proceedings because of the evidentiary issues.

At that point, the Board had the option of rehearing the case or evaluating Dr. Morris's application consistent with the Court's finding that he did not practice medicine at Blue Cross/Blue Shield. We chose to look at Dr. Morris's application, which, given the Court's decision and Dr. Morris's testimony, is the application of a physician who has not practiced medicine for a considerable period of time. With that fact set, Dr. Morris was instructed to take an examination to demonstrate current clinical competency, just as would be demanded of any other applicant who had been so long absent from the practice of medicine.

The article also included the allegation that, "The D.C. Board repeatedly delayed [processing Dr. Morris's application), asking him to provide various documents." The D.C. medical application package specifies the required documents. Dr. Morris initially did not submit all of those documents. After repeated letters from staff, the application was completed. However, there were no documents requested from Dr. Morris other than those routinely requested of applicants.

Your article attempted to link the case of Dr. Morris to the Blue Cross/Blue Shield "preferred provider plan, which excluded many doctors from the health plan because they were deemed to have ordered too many expensive services." Although Dr. Morris's role in the preferred provider plan was briefly examined at his hearing in the context of determining the nature of his practice at Blue Cross/Blue Shield, the plan was not otherwise a subject of the Board's discussions; nor was it the reason for the Board's action. Dr. Morris is not the first physician that the Board has charged and/or disciplined for practicing administrative medicine without a license. There have been many others, as evidenced in the hearing transcript. **Indeed, the Board has charged and/or disciplined physicians who were employed by the Government of the District of Columbia in administrative positions for practicing without a license.** Our regulations, which

predate Dr. Morris's application by several years, comprehend "administrative medicine" as a realm of practice.

Therefore, the allegation that somehow Dr. Morris has been singled out because of his connection to the 'preferred provider plan" is clearly not supported by the facts.

Neither is the Board's role that of an antagonist against "managed care," as readers of your article may have been led to believe. Our role is to ensure that physicians who practice medicine, including those who set medical policy or who are involved in determining the appropriateness or necessity of medical care, meet the licensure and practice requirements of the District of Columbia. Regulatory boards in other jurisdictions have similar views, as pointed out in your article. There seems to be a growing consensus that physicians who set medical policy or participate in deciding on the necessity or appropriateness of medical care are practicing medicine. "Managed care" presents its own set of regulatory concerns, such as managed care companies forbidding participating physicians from advising patients of all of the available treatment options ("gag rules"). However, the focus of the instant case was not on any unique aspect of managed care."

In the Morris case, the Board, which includes consumer members as well as physicians, has instructed a physician, who testified that he did not practice medicine for a substantial period of time, to demonstrate current clinical competency through successful completion of an independently administered and graded national examination. We view that requirement as fair and consistent with our mission as well as Dr. Morris's testimony and the Court's opinion. Moreover, we believe that knowledgeable recipients of medical care want us to require a fair assessment of the current clinical competency of physicians who have been long absent from the practice of medicine.

It is critical that your readers understand that the D.C. Court of Appeals has held that direct patient contact is not a requirement for the practice of medicine Statements to the contrary, however interesting as opinion, are not supported by the decisions of the Court.

We also believe that your readers should know that the D.C. Board of Medicine has consistently attempted to act in accordance with the licensing statute, applicable regulations, board policy and pertinent court decisions in addressing issues pertaining to licensees and applicants, including Dr. Morris.

on behalf of the D.C. Board of Medicine,
William E. Brown, M.D. Chairperson

As indicated in the above letter, it is the policy of the D.C. Board of Medicine, which has been upheld by decisions of the D.C. Court of Appeals, that patient contact is not necessary to the practice of medicine.

People who provide medical testimony, set medical policy or decide on the appropriateness or necessity of medical care in the District of Columbia should have a license to practice medicine.

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